

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JAMES RODRIGUEZ, TRUSTEE  
JMR REALTY TRUST

v.

BOARD OF ASSESSORS OF  
THE TOWN OF HALIFAX

Docket Nos.: F329170  
F329171

Promulgated:  
August 2, 2017

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Halifax ("appellee" or "assessors") to abate taxes on real estate located in Halifax, owned by and assessed to James Rodriguez, Trustee of the JMR Realty Trust ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2016.

Commissioner Rose ("Presiding Commissioner") heard these appeals under G.L. c. 58A, § 1A, and 831 CMR 1.20 and issued single-member decisions for the appellant.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*James Rodriguez, pro se, for the appellant.*

*Karen Trudeau, assessor, and Deborah Dean, assessor,  
for the appellee.*

## **FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits offered into evidence at the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

On January 1, 2015, the assessment date relevant to these appeals, the appellant was the assessed owner of two abutting improved parcels of real estate located at 9 and 13 Lake Street in Halifax (collectively, the "subject properties"). Nine Lake Street, which the assessors valued at \$156,300 for fiscal year 2016, consisted of a 3,750-square-foot non-conforming parcel improved with a "low-cost" cottage that had approximately 659 square feet of living area. Thirteen Lake Street, which the assessors valued at \$168,500 for fiscal year 2016, consisted of a 3,800-square-foot non-conforming parcel improved with a "low-cost" cottage that had approximately 835 square feet of living area.

The appellant purchased the subject properties together in April of 2013 for \$127,500. The subject properties were not improved in a material way between the date of their purchase and January 1, 2015. The properties also suffered from deficiencies, including septic systems that were in need of replacement. In fact, a new septic

system that is shared by the properties was constructed in early 2016 at a cost of more than \$30,000.

Halifax's Collector of Taxes mailed the fiscal year 2016 tax bills on September 29, 2015. In accordance with G.L. c. 59, § 57, the appellant paid the tax due on the subject properties without incurring interest and in accordance with G.L. c. 59, § 59, the appellant timely filed applications for abatement with respect to the properties on October 20, 2015. The assessors denied the abatement applications on January 12, 2016, and on March 10, 2016, the appellant seasonably filed Statements Under Informal Procedure with the Appellate Tax Board ("Board"). Pursuant to G.L. c. 58A, § 7A, the assessors timely elected to have the appeals heard under the Formal Procedure. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide these appeals.

Prior to filing the subject appeals, the appellant filed appeals with the Board with respect to the subject properties for fiscal year 2014. Having heard the fiscal year 2014 appeals, the Board found that the assessed values of the subject properties for fiscal year 2014 exceeded their fair cash values and determined a fair cash value of

\$85,000 for the property at 9 Lake Street and \$95,000 for the property at 13 Lake Street.

Because the assessors increased the assessed values of the subject properties for fiscal year 2016 from the values that the Board determined for fiscal year 2014, the burden shifted to the assessors to justify their increase in the subject properties' valuation for fiscal year 2016.<sup>1</sup> To meet their burden, the assessors submitted sales of several purportedly comparable properties that took place over almost a two-and-a-half-year span from March of 2014 to August of 2016. The properties varied significantly relative to each other and the subject properties in several ways including lot size, living area and style of dwelling. The assessors, however, failed to account or make adjustments for the differences between the purportedly comparable properties and the subject properties. Further, the assessors did not account for the effect of the failing septic systems on the subject properties' values.

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<sup>1</sup> G.L. c. 58A, § 12A provides:

If the owner of a parcel of real estate files an appeal of the assessed value of said parcel with the board for either of the next two fiscal years after a fiscal year for which the board has determined the fair cash value of said parcel and if the assessed value is greater than the fair cash value as determined by the board, the burden shall be upon the appellee to prove that the assessed value was warranted.

Based on the evidence of record, the Presiding Commissioner found and ruled that the assessors failed to sustain their burden of proving that the subject properties' assessed values for fiscal year 2016 were warranted. Accordingly, the Presiding Commissioner found that the values determined by the Board for fiscal year 2014 were the appropriate values for the subject properties for fiscal year 2016. On this basis, the Presiding Commissioner decided these appeals for the appellant and reduced the assessed value of 9 Lake Street from \$156,300 to \$85,000 and 13 Lake Street from \$168,500 to \$95,000.

#### OPINION

Assessors are required to assess real estate at its "fair cash value." G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549, 566 (1956).

Generally, the burden of proof is on a taxpayer to prove that the subject property has a lower value than that assessed. *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974) (citing *Judson Freight Forwarding Co. v. Commonwealth*, 242 Mass. 47, 55 (1922)). If, however,

the assessment at issue exceeds the Board's prior determination of a property's fair cash value for either of the two immediately preceding fiscal years, then, pursuant to G.L. c. 58A, § 12A, "the burden shall be upon the [assessors] to prove that the assessed value was warranted." See also *Cressey Dockham & Co., Inc. v. Assessors of Andover*, Mass. ATB Findings of Fact and Reports 1989-72, 86-87 ("Once a prior determination of the Board of the fair cash value of the same property [for one of the prior two fiscal years] has been placed in evidence, [] the statute requires the [assessors] to produce evidence to 'satisfy the Board that the increased valuation was warranted.'" (additional citation omitted)).

For fiscal year 2016, the assessors increased the assessed values of the subject properties relative to the values determined by the Board for fiscal year 2014. Thus, in the present appeals, the assessors bore the burden of proving that the increases in the subject properties' assessed values were warranted.

Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue. *McCabe v. Chelsea*, 265 Mass. 494, 496 (1929). When comparable sales are used, however,

allowances must be made for various factors which would otherwise cause disparities in the comparable properties' sale prices. See *Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke*, Mass. ATB Findings of Fact and Reports 1998-1072, 1082. "Adjustments for differences in the elements of comparison are made to the price of each comparable property . . . . The magnitude of the adjustment made for each element of comparison depends on how much that characteristic of the comparable property differs from the subject property." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 322 (13<sup>th</sup> ed., 2008).

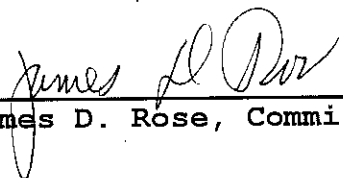
To meet their burden in the present appeals, the assessors offered sales of purportedly comparable properties. Though the sales took place over almost a two-and-a-half-year span and the properties varied significantly relative to each other and the subject properties in several ways, the assessors failed to make adjustments for any element of comparison with the subject property. Moreover, the assessors made no provision for the effect of septic systems that were in need of replacement on the subject properties' values.

Finally, the balance of the evidence, including the appellant's purchase of the subject properties in April of

2013 for \$127,500 and the lack of material improvements to the properties, did not support the contested assessment.

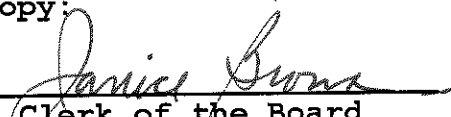
In sum, after considering the evidence presented, the Presiding Commissioner found and ruled that the assessors failed to satisfy their burden of demonstrating that the increase in the subject properties' assessed values from the Board's previous findings of fair cash value were warranted. On this basis, the Presiding Commissioner decided these appeals for the appellant and reduced the assessed value of 9 Lake Street from \$156,300 to \$85,000 and 13 Lake Street from \$168,500 to \$95,000.

**APPELLATE TAX BOARD**

By:   
James D. Rose, Commissioner

A true copy:

Attest:

  
Clerk of the Board

*Asst.*